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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 DEBORAH MOLLER, an individual
12 and successor-in-interest of BRET
13 BREUNIG, deceased,

14 Plaintiffs,

15 vs.

16 COUNTY OF SAN BERNARDINO,
17 a public entity; UNIDENTIFIED
18 DEPUTIES, individuals; CITY OF
19 REDLANDS, a public entity;
20 UNIDENTIFIED OFFICERS,
21 individuals; LOMA LINDA
22 UNIVERSITY MEDICAL
23 CENTER, a non-profit corporation;
24 UNIDENTIFIED HEALTH CARE
25 PROFESSIONALS, individuals; and
26 KENNETH BREUNIG, a nominal
27 Defendant,

28 Defendant.

Case No. 5:22-cv-01306-DSF-MARx

~~PROPOSED~~ ORDER ON
STIPULATED PROTECTIVE
ORDER

Assigned to JUDGE DALE S.
FISCHER, for all purposes including
trial

Assigned to MAGISTRATE JUDGE
MARGO A. ROCCONI, for all
discovery related motions

TRIAL DATE: 08/29/23
ACTION FILED: 08/02/22

1 1. INTRODUCTION

2 1.1. PURPOSES AND LIMITATIONS

3 Discovery in this action is likely to involve production of confidential,
4 proprietary, or private information for which special protection from public
5 disclosure and from use for any purpose other than prosecuting this litigation may
6 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
7 enter the following Stipulated Protective Order. The parties acknowledge that this
8 Order does not confer blanket protections on all disclosures or responses to
9 discovery and that the protection it affords from public disclosure and use extends
10 only to the limited information or items that are entitled to confidential treatment
11 under the applicable legal principles. The parties further acknowledge, as set forth
12 in Section 12.3 below, that this Stipulated Protective Order does not entitle them to
13 file confidential information under seal; Civil Local Rule 79-5 sets forth the
14 procedures that must be followed and the standards that will be applied when a
15 party seeks permission from the Court to file material under seal.

16 1.2. GOOD CAUSE STATEMENT

17 This action is likely to involve personnel and medical files and similar files
18 the disclosure of which would constitute a clearly unwarranted invasion of personal
19 privacy, records or information compiled for law enforcement purposes, trade
20 secrets, customer and pricing lists and other valuable research, development,
21 commercial, financial, technical and/or proprietary information for which special
22 protection from public disclosure and from use for any purpose other than
23 prosecution of this action is warranted. Such confidential and proprietary materials
24 and information consist of, among other things, confidential business or financial
25 information, information regarding confidential business practices, or other
26 confidential research, development, or commercial information (including
27 information implicating privacy rights of third parties), information otherwise
28 generally unavailable to the public, or which may be privileged or otherwise

protected from disclosure under state or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

2. DEFINITIONS

2.1. Action: This pending federal lawsuit.

2.2. Challenging Party: A Party or Non-Party that challenges the designation of information or items under this Order.

2.3. “CONFIDENTIAL” Information or Items: Information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4. Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

2.5. Designating Party: A Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.6. Disclosure or Discovery Material: All items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including,

1 among other things, testimony, transcripts, and tangible things), that are produced
2 or generated in disclosures or responses to discovery in this matter.

3 2.7. Expert: A person with specialized knowledge or experience in a
4 matter pertinent to the litigation who has been retained by a Party or its counsel to
5 serve as an expert witness or as a consultant in this Action.

6 2.8. House Counsel: Attorneys who are employees of a party to this
7 Action. House Counsel does not include Outside Counsel of Record or any other
8 outside counsel.

9 2.9. Non-Party: Any natural person, partnership, corporation, association,
10 or other legal entity not named as a Party to this action.

11 2.10. Outside Counsel of Record: Attorneys who are not employees of a
12 party to this Action but are retained to represent or advise a party to this Action and
13 have appeared in this Action on behalf of that party or are affiliated with a law firm
14 which has appeared on behalf of that party, and includes support staff.

15 2.11. Party: Any party to this Action, including all of its officers, directors,
16 employees, consultants, retained experts, and Outside Counsel of Record (and their
17 support staffs).

18 2.12. Producing Party: A Party or Non-Party that produces Disclosure or
19 Discovery Material in this Action.

20 2.13. Professional Vendors: Persons or entities that provide litigation
21 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
22 demonstrations, and organizing, storing, or retrieving data in any form or medium)
23 and their employees and subcontractors.

24 2.14. Protected Material: Any Disclosure or Discovery Material that is
25 designated as "CONFIDENTIAL."

26 2.15. Receiving Party: A Party that receives Disclosure or Discovery
27 Material from a Producing Party.
28

1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above), but also (1) any information copied or
4 extracted from Protected Material; (2) all copies, excerpts, summaries, or
5 compilations of Protected Material; and (3) any testimony, conversations, or
6 presentations by Parties or their Counsel that might reveal Protected Material.

7 Any use of Protected Material at trial shall be governed by the orders of the
8 trial judge. This Order does not govern the use of Protected Material at trial.

9
10 4. DURATION

11 Once a case proceeds to trial, all of the information that was designated as
12 confidential or maintained pursuant to this Protective Order becomes public and will
13 be presumptively available to all members of the public, including the press, unless
14 compelling reasons supported by specific factual findings to proceed otherwise are
15 made to the trial judge in advance of the trial. See Kamakana v. City and County of
16 Honolulu, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing “good cause”
17 showing for sealing documents produced in discovery from “compelling reasons”
18 standard when merits-related documents are part of court record). Accordingly, the
19 terms of this Protective Order do not extend beyond the commencement of the trial.

20
21 5. DESIGNATING PROTECTED MATERIAL

22 5.1. Exercise of Restraint and Care in Designating Material for Protection
23 Each Party or Non-Party that designates information or items for protection under
24 this Order must take care to limit any such designation to specific material that
25 qualifies under the appropriate standards. The Designating Party must designate
26 for protection only those parts of material, documents, items, or oral or written
27 communications that qualify so that other portions of the material, documents,
28 items, or communications for which protection is not warranted are not swept

1 unjustifiably within the ambit of this Order.

2 Mass, indiscriminate, or routinized designations are prohibited. Designations
3 that are shown to be clearly unjustified or that have been made for an improper
4 purpose (e.g., to unnecessarily encumber the case development process or to
5 impose unnecessary expenses and burdens on other parties) may expose the
6 Designating Party to sanctions.

7 If it comes to a Designating Party's attention that information or items that it
8 designated for protection do not qualify for protection, that Designating Party must
9 promptly notify all other Parties that it is withdrawing the inapplicable designation.

10 5.2. Manner and Timing of Designations. Except as otherwise provided in
11 this Order (*see, e.g.*, Section 5.2(a) below), or as otherwise stipulated or ordered,
12 Disclosure or Discovery Material that qualifies for protection under this Order must
13 be clearly so designated before the material is disclosed or produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic
16 documents, but excluding transcripts of depositions or other pretrial or trial
17 proceedings), that the Producing Party affix at a minimum, the legend
18 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
19 contains protected material. If only a portion or portions of the material on a page
20 qualifies for protection, the Producing Party also must clearly identify the protected
21 portion(s) (e.g., by making appropriate markings in the margins).

22 A Party or Non-Party that makes original documents available for
23 inspection need not designate them for protection until after the inspecting Party
24 has indicated which documents it would like copied and produced. During the
25 inspection and before the designation, all of the material made available for
26 inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
27 identified the documents it wants copied and produced, the Producing Party must
28 determine which documents, or portions thereof, qualify for protection under this

Order. Then, before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) for testimony given in depositions, that the Designating Party identify the Disclosure or Discovery Material on the record, before the close of the deposition all protected testimony.

(c) for information produced in form other than document and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend “CONFIDENTIAL.” If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3. Inadvertent Failure to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1. Timing of Challenges. Any party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court’s Scheduling Order.

6.2. Meet and Confer. The Challenging Party shall initiate the dispute resolution process under Local Rule 37.1 et seq.

6.3. The burden of persuasion in any such challenge proceeding shall be on

the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1. Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of Section XIII below.

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

- (a) the Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;
- (b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;
- (c) Experts (as defined in this Order) of the Receiving Party to whom

disclosure is reasonably necessary for this Action and who have signed the
 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the Court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional
 Vendors to whom disclosure is reasonably necessary for this Action and who have
 signed the “Acknowledgment and Agreement to be Bound” attached as Exhibit A
 hereto;

(g) the author or recipient of a document containing the information or a
 custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the
 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
 requests that the witness sign the “Acknowledgment and Agreement to Be Bound;”
 and (2) they will not be permitted to keep any confidential information unless they
 sign the “Acknowledgment and Agreement to Be Bound,” unless otherwise agreed
 by the Designating Party or ordered by the Court. Pages of transcribed deposition
 testimony or exhibits to depositions that reveal Protected Material may be
 separately bound by the court reporter and may not be disclosed to anyone except
 as permitted under this Stipulated Protective Order; and

(i) Any mediator or settlement officer, and their supporting personnel,
 mutually agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation
 that compels disclosure of any information or items designated in this Action as
 “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification

1 shall include a copy of the subpoena or court order;

2 (b) promptly notify in writing the party who caused the subpoena or order
3 to issue in the other litigation that some or all of the material covered by the
4 subpoena or order is subject to this Protective Order. Such notification shall
5 include a copy of this Stipulated Protective Order; and

6 (c) cooperate with respect to all reasonable procedures sought to be
7 pursued by the Designating Party whose Protected Material may be affected.

8 If the Designating Party timely seeks a protective order, the Party served
9 with the subpoena or court order shall not produce any information designated in
10 this action as “CONFIDENTIAL” before a determination by the Court from which
11 the subpoena or order issued, unless the Party has obtained the Designating Party’s
12 permission. The Designating Party shall bear the burden and expense of seeking
13 protection in that court of its confidential material and nothing in these provisions
14 should be construed as authorizing or encouraging a Receiving Party in this Action
15 to disobey a lawful directive from another court.

16
17 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
18 PRODUCED IN THIS LITIGATION

19 (a) The terms of this Order are applicable to information produced by a
20 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
21 produced by Non-Parties in connection with this litigation is protected by the
22 remedies and relief provided by this Order. Nothing in these provisions should be
23 construed as prohibiting a Non-Party from seeking additional protections.

24 (b) In the event that a Party is required, by a valid discovery request, to
25 produce a Non-Party’s confidential information in its possession, and the Party is
26 subject to an agreement with the Non-Party not to produce the Non-Party’s
27 confidential information, then the Party shall:

28 (1) promptly notify in writing the Requesting Party and the Non-Party

1 that some or all of the information requested is subject to a confidentiality
2 agreement with a Non-Party;

3 (2) promptly provide the Non-Party with a copy of the Stipulated
4 Protective Order in this Action, the relevant discovery request(s), and a reasonably
5 specific description of the information requested; and

6 (3) make the information requested available for inspection by the
7 Non-Party, if requested.

8 (c) If the Non-Party fails to seek a protective order from this court within
9 14 days of receiving the notice and accompanying information, the Receiving Party
10 may produce the Non-Party's confidential information responsive to the discovery
11 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
12 not produce any information in its possession or control that is subject to the
13 confidentiality agreement with the Non-Party before a determination by the court.
14 Absent a court order to the contrary, the Non-Party shall bear the burden and
15 expense of seeking protection in this court of its Protected Material.

16
17 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

18 If a Receiving Party learns that, by inadvertence or otherwise, it has
19 disclosed Protected Material to any person or in any circumstance not authorized
20 under this Stipulated Protective Order, the Receiving Party must immediately (a)
21 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
22 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
23 the person or persons to whom unauthorized disclosures were made of all the terms
24 of this Order, and (d) request such person or persons to execute the
25 "Acknowledgment and Agreement to be Bound" that is attached hereto as Exhibit
26 A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the Stipulated Protective Order submitted to the Court.

12. MISCELLANEOUS

12.1. Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2. Right to Assert Other Objections. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3. Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the Court, then the Receiving Party may file the information in the public record unless otherwise instructed by the Court.

13. FINAL DISPOSITION

After the final disposition of this Action, as defined in Section 4, within sixty (60) days of a written request by the Designating Party, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (Duration).

14. Any willful violation of this Order may be punished by civil or criminal contempt proceedings, financial or evidentiary sanctions, reference to disciplinary authorities, or other appropriate action at the discretion of the Court.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: October 18, 2022



HON. MARGO A. ROCCONI
U.S. Magistrate Judge